*THE HONOURABLE SRI JUSTICE V.V.S.RAO

+WRIT PETITION Nos.20769 of 2003 and 8733 of 2004

%30-11-2004

W.P.No.20769 of 2003

Dr.S.Sushma Kumari and others

..PETITIONERS

Vs.

$ State of Andhra Pradesh, rep. by its Principal Secretary to Govt., Education (Higher Education) Department, Secretariat, Saifabad, Hyderabad and others.

..RESPONDENTS

W.P.No.8733 of 2004

Dr. G. Rajani Kumar and others

..... PETITIONERS

AND

$ State of Andhra Pradesh, rep. by its Principal Secretary to Government, Education (Higher Education) Department, Secretariat, Hyderabad and others.

…RESPONDENTS

For both the writ petitions

! Counsel for the Petitioners: MR.NUTY RAM MOHAN RAO

^ Counsel for Respondent No.1: G.P. for Higher Education

Counsel for Respondent No.2: G.P. for Medical, Health and Family Welfare

Counsel for the Respondent Nos.3 and 4:Dr.Y.PADMAVATHI

<GIST

>HEAD NOTE:

?CASES REFERRED:

1. AIR 2003 SC 1947
2. Kept pending as per the directions of Hon'ble High Court
3. (2002) 7 SCC 258 = 2002 (6) Scale 332
4. (2002) 8 SCC 152
5. (2003) 4 SCC 276
6. (2003) 3 SCC 366
7. Though at the relevant time, the University purportedly followed the rule of reservation among SC-A, B, C and D categories, as per this Act, at present, this Act cannot be enforced by reason of recent judgment of the Constitution Bench of the Supreme Court declaring the said Act *ultra vires.*
8. AIR 1991 AP 194
9. 2002 (4) ALT 9 = 2002 (4) ALD 389 (FB)
10. AIR 1958 AP 129
11. AIR 1958 AP 569
12. AIR 1992 Bom 233
13. (1994) 4 SCC 401
14. (1995) 2 SCC 745
15. AIR 1996 SC 1378 = (1996) 3 SCC 253
16. Judgment in W.P.No.9541 of 2004, dt.14.10.2004.

17. The paragraphs referred to in the above principles relate to the paragraph in Annexure-IV to G.O.P.No.646, dt.10.7.1999.

18. AIR 1999 SC 2894 = (1999) 7 SCC 120

19. AIR 1981 SC 2045

20. AIR 1987 SC 400 = (1986) Supp.SCC 543

21. (1994) 4 SCC 401 = 1994 SCW 2515

22. This aspect of the matter is adverted to in the counter affidavit of respondents in W.P.No.8733 of 2004

23. FAIR 1988 SC 1875

24. AIR 1992 SC 932

25. 1993 Supp (2) SCC 71

26. (1998) 6 SCC 131

27. (1987) 4 SCC 459

28. (1990) 4 SCC 624

(Special Original Jurisdiction)

TUESDAY, THE THIRTIETH DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.V.S.RAO

-

WRIT PETITION Nos.20769 of 2003 and 8733 of 2004

-

WRIT PETITION NO : 20769 of 2003

Between:

Dr.S.Sushma Kumari, W/o. Late Sriramulu,
R/o.8-3-9898/10/3, SBH Colony (Extn.), Srinagar Colony, Hyderabad.

..... PETITIONER

AND

1 State of Andhra Pradesh, rep. by its Principal Secretary to Govt., Education (Higher Education) Dept.,Secretariat, Saifabad, Hyderabad.
2 State of Andhra Pradesh rep. by its Principal Secretary to Govt., Medical, Health & Family Welfare Dept., Secretariat, Hyderabad.
3 NTR University of Health Sciences, Vijayawada, rep. by its Registrar

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction; more particularly one in the nature of Writ of Mandamus: (a) By declaring the action of the respondents in seeking to fill the M.D.S.Orthodontia Course seat reserved for Backward Class-B category students with any non-local student as bad in law; (b) Consequently, direct the respondents to consider and grant admission to the writ petition herein in M.D.S.Orthodontia course, as the writ petitioner is the 1st rank holder amongst the BC-B local category candidates; (c) Direct the respondents to refrain from filing any of the seats in the M.D.S.orthodontia Course set apart for reserved category BC, SC and ST with non-local UR category students.

Counsel for the Petitioner: MR.NUTY RAM MOHAN RAO

Counsel for Respondent No.1: G.P. for Higher Education

Counsel for Respondent No.2: G.P. for Medical, Health and Family Welfare

Counsel for the Respondent No.3:Dr.Y.PADMAVATHI

WRIT PETITION NO : 8733 of 2004

Between:

1 Dr. G. Rajani Kumar, S/o G. Sanyasi Naidu,
R/o Hyderabad.
2 Dr. S. Sushma Kumari, D/o Sri Ramulu
R/o Hyderabad.

..... PETITIONERS

AND

1 State of Andhra Pradesh, rep. by its Principal Secretary to Government, Education (Higher Education) Department, Secretariat, Hyderabad.
2 State of Andhra Pradesh, rep. by its Principal Secretary to Government, Medical, Health & Family Welfare Department, Secretariat, Hyderabad.
3 NTR University of Health Sciences, Vijayawada,
rep. by its Registrar.
4 The Selection Committee for admission into M.D.S, Course - 2003, NTR University of Health Sciences, Vijayawada, rep. by its Chairman.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue a writ, order or direction, more particularly, one in the nature of writ of Mandamus; a) By declaring the action of the respondents in filling up the UR segment seats in M.D.S. Course with backward class category candidate as arbitrary, illegal and violative of Article 14 of Constitution of India and also declare the action of the respondents in not filling up the seats in Osmania University region with backward class candidates as arbitrary, illegal and violative of Article 14 of Constitution of India, b) Direct the respondents to fill up the seats in M.D.S. Course with BC candidates in Osmania University region and also treat the rank holders No.1 and 2 as UR seats and fill up the resultant seats with next meritorious candidates in the merit list; c) Direct the respondents to consider the case of the petitioners for admission into M.D.S Course in any of the Specialties for the academic year 2003-04 by duly filling up the UR seats at the first instance and fill up the 85% of the seats with the petitioners.

Counsel for the Petitioners: MR.NUTY RAM MOHAN RAO

Counsel for Respondent No.1: G.P. for Higher Education

Counsel for Respondent No.2: G.P. for Medical, Health and Family Welfare

Counsel for the Respondent Nos.3 and 4:Dr.Y.PADMAVATHI

The Court made the following :

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION NO.20769 OF 2003 AND 8733 OF 2004

COMMON ORDER:

Background of the case

This common order shall dispose of both the Writ Petitions as common questions of fact and law arise for consideration. The fact of the matter as noticed hereunder is with reference to Writ Petition No.8733 of 2004, which is not much different from the other, except the context. The N.T.R. University of Health Sciences, third respondent, (hereafter called, the university) issued a notification on 9.6.2003 inviting applications for entrance test for admission to fourteen seats of Master of Dental Surgery (MDS) in Government Dental College, Hyderabad. The entrance test was conducted on 27.7.2003 and the results were announced on 11.8.2003. First petitioner, Dr.G.Rajni Kumar belongs to Backward Class D - Group. (B.C-D). He obtained rank 8 and second petitioner Dr.S.Sushma Kumari, who belongs to B.C.-B category also appeared in the entrance test and obtained rank 23. All the persons, who qualified in the entrance test were asked to appear before the Selection Committee on 20.8.2003 for counselling. The same could not, however, be proceeded with owing to certain legal impediments. At that stage, second petitioner filed W.P.No.20769 of 2003 contending that being the highest ranking candidate among B.C.-B candidates, she ought to have been offered a seat in MDS (Orthodontia), prayed for a Writ of Mandamus to declare the action of the university in filling up the seat in Orthodontia reserved for B.C-B candidates with any student not belonging to Osmania University (OU) local area, is bad in law and for a consequential direction to the University to admit the petitioner in MDS (Orthodontia). Along with the Writ Petition she also filed miscellaneous applications, being W.P.M.P.Nos.25988 and 25989 of 2003 praying for provisional admission and for injunction restraining the University in filling up the seat in MDS (Orthodontia). This Court by order dt.10.2.2004 dismissed both the W.P.M.Ps.

The selection committee met on 28.4.2004 when the petitioners appeared before the selection committee. Allegedly first petitioner is highest ranking candidate among B.C-D and second petitioner is highest ranking candidate among B.C-B group, the university did not admit them and therefore they filed the second Writ Petition, being W.P.No.8733 of 2004 praying for a declaration that the action of the university in filling up MDS as un-reserved seat with BC candidates as arbitrary and violative of Article 14 of the Constitution of India, and for a declaration that the action of the respondents in not filling up the seats in Osmania University area with BC candidates as arbitrary and violative of Article 14 of the Constitution, and for a direction to respondents to fill up the seats in MDS course with B.C. candidates in Osmania University region and also treat the rank holder Nos.1 and 2 as un-reserved seats and fill up the resultant seats with next meritorious candidates in the merit list. They also seek a direction to respondents to consider the case of the

petitioners for admission into MDS course in any specialty for the academic year 2003-2004 duly filling up un-reserved seats at the first instance and fill up the 85% of seats with the petitioners.

Petitioners' specific pleadings

The case of the petitioners in a nutshell is as follows. There are fourteen seats in seven specialties – two seats in each specialty; in MDS course. Seven seats are to be filled up by candidates belonging to other communities (OC candidates) and seven seats are reserved in favour of candidates belonging to reserved classes – S.C., S.T., and B.Cs. As per the relevant Rules and administrative guidelines framed/issued by Government, four seats out of seven reserved seats have been earmarked for B.C. candidates, two seats for S.C., and one seat for S.T. The seven unreserved seats are filled up according to roaster in a cycle of seven years. As per Andhra Pradesh Educational Institutions (Regulation of Admissions) Order, 1974 (Presidential Order, for brevity) read with relevant rules, out of fourteen seats, five seats are earmarked for candidates belonging to Andhra University (AU) local area, four seats for Osmania University (OU) local area, and three seats are set apart for Sri Venkateswara University (SVU) local area. The remaining two seats are treated as unreserved (UR) to be filled up by high-ranking meritorious candidates as per specialty option/choice of such non-local candidates.

This method of local area reservation is followed as Government Dental College is a State-wide institution and the admissions are to be filled up by distributing the seats in the ratio of 42:36:22 in relation to AU, OU, and SVU local areas respectively. Since there are four seats allocated to OU local area, it is contended two seats are to be filled up by open competition, and two seats are to be filled up by reserved category candidates. Likewise, in AU local area two or three seats are liable to be filled up under open competition, and two or three seats are liable to be filled up by reserved category candidates and in SVU local area, two seats would go to open competition and one seat would go to reserved category candidate.

It is further case of the petitioners that the University has not followed the above procedure and adopted an illegal method of selection. The University has filled up three seats in OU local area with OC candidates and one seat with ST candidate, who secured rank 85 and also filled up unreserved seats by granting admission to reserved category candidates, which is not permissible. There cannot be any reservation among 15% unreserved seats as held by the Supreme Court in **N.T.R.University of Health Sciences v. G.Babu Rajendra Prasad**. The respondents filled up unreserved seats with a candidate belonging to B.C.-B candidate and the respondents ought to have filled up the rank holders 1 and 2 as unreserved seats and ought to have filled up two seats in OU local area with OC candidates and the two seats with BC candidates. The respondents have adopted erroneous and illegal method contrary to rules and thereby denying admission to

petitioners and that the method adopted by the University is arbitrary, illegal and violative of Article 14 of the Constitution of India.

Respondents' pleadings

The University has filed a counter affidavit in both the Writ Petitions opposing the case of the petitioners. It would, however, be necessary to refer to counter-averments in W.P.No.8733 of 2004. The following averments made in the counter affidavit are relevant. The Government of Andhra Pradesh issued orders in G.O.Ms.No.464, dt.18.9.1993 prescribing rule of reservation on rotation basis for seven years in various specialties of MDS to SCs, STs and BCs. As the Government Dental College is State-wide institution, admissions are being made in accordance with paragraph-6 of the Presidential Order duly reserving 85% of the available seats in every course of study in the ratio of 42:36:22 in favour of candidates belonging to AU local area, OU local area and SVU local area respectively. Though there are seven specialties, as per interim directions issued by this Court in W.P.Nos.17008 and 17327 of 2003, dt.23.12.2003, the University is treating all courses as one unit to give effect to the Presidential Order. Further, in W.P.No.17322 of 2003, this Court by order dt.12.4.2004 directed to follow the roaster prescribed by the Government in G.O.Ms.No.47, dt.31.5.2000 in respect of distribution of seats reserved for SC category students as amended by G.O.Ms.No.464, dt.18.9.1993. By order dt.23.4.2004, in W.A.No.824 of 2004, this Court suspended the judgment of the learned Single Judgment W.P.No.17332 of 2003 and directed the University to proceed with counselling but not give effect to the same insofar as one seat is concerned. It was also observed that counselling for that seat would be subject to further orders in Writ Appeal.

In the counter affidavit, it is further stated that the fourteen seats in MDS shall have to be filled up by distributing among three local areas as per Annexure-IV of the relevant Government Order issued under the Presidential Order duly following the reservation as per G.O.Ms.No.464 and categorization of SCs as per G.O.Ms.No.47, dt.31.5.2000. After first stage of selections by the selection committee, the following provisional selection was made.

1. Orthodontia OC 1 (OU) BC-B 3 (NL)

2. Prosthetic Dentistry OC 12 (AU) BC-C --

3. Oral & Maxillo Facial Surgery OC 7 (OU) SC-C 102 (AU)

4. Paedodontic with Preventive Dentistry OC 4 (NL) BC-D 76 (AU)

5. Conservative Dentistry OC 2 (OU) SC-D --*

6. Periodontiology OC 8 (OU) BC-A 47 (SVU)

7. Oral Medicine & Radiology OC 16 (AU) ST --

NB:- the local area is mentioned by letters OU, AU or SVU as the case may be and unreserved seats are represented by the words NL (Non-local). The Statutory reservation category is mentioned in favour of local area or non-local area as the case may be.

After provisional selection, four seats reserved for AU local area were filled up by selecting 12th rank, 16th rank OC candidates, and 76th rank B.C-D and 102 rank S.C.-C candidates. The four seats as mentioned earlier are reserved for OU local area and these seats are filled up by selecting first, second, seventh and eighth rank OC candidates, filling up all the four seats. One B.C-A candidate with 47th rank is selected to fill up one seat in SVU local area and third rank B.C.-B and fourth rank O.C. candidates are selected for unreserved seats. The reasons for not filling up one seat in AU local area and two seats in SVU local area are mentioned in the counter affidavit in the following terms.

> It is submitted that after 1st stage it is observed with regard to the University area that two seats in SVU area and one seat in AU area are vacant and with regard to the subjects one BC-C and one ST are vacant apart from one seat (SC-D) which was kept aside as per the directions of the Hon'ble High Court dt.28.4.2004 in W.A.M.P.No.1549/2004 in W.A.M.P.No.1497 of 2004 in W.P.No.824 of 2004.
>
> After perusal of 1st stage it is observed that no ST candidate has come under selection purview. It is observed that only one ST candidate with Rank 85 of OU area has attended the counselling and a seat has to be allotted to ST candidate with Rank 85 to maintain reservation for ST candidates. Hence, Rank 85 ST candidate is allotted a seat by replacing the least meritorious OU area candidate i.e., Rank 8 who has come under selection purview. If Rank 8 and Rank 23 have to be allotted seats, Rank 7 has to be replaced who is more meritorious than Rank 8 and 23. Hence the selections made on 28.4.2004 are strictly in accordance with rules.
>
> It is further submitted that as BC-C candidates are not available the BC-C seat in Prosthetic Dentistry is converted to any BC and the seat is allotted to the next meritorious BC candidate depending upon the vacancy available in the respective University local area and rank. The top ranks of BCs are as follows:
>
> BC-A: 47 – SVU (The only BC-A candidate selected under BC-A
>
> BC-B: 3 – NL (Already selected
>
> 23 - OU
>
> 25 - SVU
>
> 31 - OU
>
> 68 - NL
>
> BC-D 8 - OU

13 - OU

76 - AU

The highest rank among the BC-D is 8 and BC-B is 23 both are from OU Area if BC-D candidate with Rank No.8 is to be selected Rank No.7 has to be replaced from OC which is higher rank than 8 from OU area.

As two seats in SVU area and one seat in AU area have to be filled to fulfil the university area reservations the highest rank among the BC candidates from SVU and AU area is Rank No.25. A BC-B candidate from SVU area was allotted the BC seat which was converted from BC-C.

Insofar as vacant seats in AU local area and SVU local area are concerned, it is stated that all category seats were filled except seat reserved for SC-D which was kept pending as per orders of the Court. Among AU and SVU candidates, rank 20 is the better rank and hence the OC seat is allotted to SVU local area and the seat in AU area is kept vacant as per Court orders. Considering the options of the candidates with ranks 16 and 20, who are selected under OC, rank 16 was allotted Periodonotology and rank 20 was allotted Oral Medicine and Radiology as per their options. After following this method final list of selected candidates for M.D.S. course for the year 2003-2004 is as follows.

Sl.No. Rank in Name of Candidate Category Area

Entrance test

Conservative Dentistry

1. 2 Dr. Surya Kumari NBP. OC OU

Oral & Maxillofacial Surgery

1. 7 Dr. Sreelalitha OC OU

2. 102 Dr. Anupama K SC-C AU

Oral Medicine & Radiology

1. 20 Dr. Sudheer K.A. OC SVU

2. 85 Dr. Ramlal G ST OU

Orthodontia

1. 1 Dr. Shameem OC OU

2. 3 Dr. Swathi V BC-B UR

Pedodontics with Preventive Dentistry

1. 4 Dr. Hema Chandrika I OC UR

2. 76 Dr. Rajajee K.T.S.S. BC-D AU

Periodontiology

1. 16 Dr. Satyanarayana OC AU

A.V.K.Abba Rao

2. 47 Dr. Hema Chandra Babu C BC-A SVU

Prosthetic Dentistry

1. 12 Dr. Triveni VVS OC AU

2. 25 Dr. Sreenivasulu .K Any BC SVU

In the counter affidavit it is also sated that the University has followed the procedure laid down in the Government Orders in G.O.P.No.646, Education (W), dt.10.7.1979 and there is no obligation on the part of the University to fill un-reserved seats with any particular class nor to treat rank Nos.1 and 2 as unreserved seats. The procedure adopted by the university in following said Government Order is also approved by this Court in Writ Petition No.23107 of 2002 in regard to P.G. Medical Admissions. As per the communication of Medical Council of India (MCI), dt.1.11.2003, the university has to strictly adhere to the admission schedule prescribed by MCI and therefore all the selections were completed before the last date i.e., 31.5.2004 for the academic year 2004-2005, and therefore the university prays to dismiss the Writ Petitions.

Petitioners' contentions

Learned counsel for the petitioners, Sri N.Rama Mohan Rao, made the following submissions. The university has to follow the rule of local reservation as well as statutory reservation and therefore high ranking reserved candidate like petitioners, who are also local candidates are entitled to be admitted to the seats earmarked for reserved candidates in MDS course. This rule can be implemented by filling up two unreserved seats out of fourteen seats only in favour of high ranking candidates as per their option and then reckoning reservation for local areas as well as statutory reservations accordingly. The university has committed grave error in selecting candidate belonging to non-local B.C-B candidate in the second seat which is always reserved for reserved candidates and then to fill up as per the cycle prescribed in G.O.Ms.No.464, dt.18.9.1993. This is impermissible, as a seat earmarked in the reserved segment cannot be given to non-local candidate,

because such action would violate the rule of minimum reservation in favour of SC/ST/BC candidates. This would further result in contravention of the rule of local area reservation as per the Presidential Order. If a high ranking B.C-B non-local candidate is compelled to take a seat earmarked for O.C., such candidate might necessarily opt for a branch/specialty other than Orthodontia according to his/her option in which event second seat in every specialty reserved for reserved classes would go to such class in strict compliance with the Government Orders in G.O.Ms.No.464, dt.18.9.1993. The petitioners got highest ranks among backward classes in OU local area and they were denied seats in illegal manner. All the four seats reserved for OU local area have been filled up with OC candidates, which is not permissible under law. Lastly, the learned counsel would urge that the admissions for the year 2003-2004 were completed and classes commenced on 8.5.2004 beyond the schedule prescribed by MCI and therefore petitioners, in equities, are entitled to be admitted to the course even if the course is completed and admissions for next academic year 2004-2005 are completed.

Respondents' contentions

Learned Standing Counsel for N.T.R. University of Health Sciences, Dr.Y.Padmavathi while reiterating the submissions and contentions taken in the counter affidavit filed by the Registrar of the university, she also submits that the admissions are since completed and the courses are commenced, this Court may not be inclined to issue any Mandamus to admit the students in the mid-academic year. She placed reliance on **Medical Council of India v. Madhu Singh, Shafali Nandwani v. State of Haryana, Paramjeet Gambhir v. State of M.P., and Neelu Arora v. Union of India.**

It would be proper to refer to the legal regime in this regard before dealing with the points that are thrown up by the background facts.

The relevant Statutory Rules and Government Orders

The admissions to M.D.S. course – like all other courses, especially medical courses; are governed by (i) A.P. Educational Institutions (Regulation of Admissions) Order 1974; (ii) A.P. Educational Institutions (Regulation of Admissions & Prohibition of Capitation Fee) Act, 1983 (hereafter called, Act 5 of 1983); (iii) The A.P. Regulation of Admission to the M.D.S. Course in the Government Dental College and Hospital, Hyderabad, Rules, 1985 (hereafter called, MDS Rules) ; (iv) The Government Orders issued in G.O.Ms.No.464, dt.18.9.1993; (v) A.P. Scheduled Castes (Rationalization of Reservations) Act, 2000; and (vi) G.O.Ms.No.47, dt.31.5.2000. It is not necessary to elaborately refer to these statutory and executive orders because contestants in this case do not dispute the proposition that admissions to First Year M.D.S. course are to be made within the fourcorners of these rules, regulations and orders. Be that as it is, the Presidential Order requires admissions in every State-wide institution to be made in accordance with paragraph-6 of the Presidential Order. According to paragraph-6, 85% of the seats in the State-wide educational institution shall be reserved in favour of local candidates in relation

to AU, OU and SVU local areas in the ratio of 42:36:22 respectively. The available seats are calculated after excluding seats in courses reserved for candidates belonging to States other than Andhra Pradesh (See Paragraph 2(a) of the Presidential Order). As per Section 3(2) of the Act 5 of 2003, admissions to medical courses including MDS are to be made based on the merit of a candidate in entrance test held for the purpose. For the purpose of such entrance test, selections and admissions etc., the Government of Andhra Pradesh promulgated rules in exercise of powers under Section 3 read with Section 15 of the Act 5 of 1983 in relation to MDS Rules. These rules are to be scrupulously followed by the University by reason of Section 12 of the said Act, which gives overriding effect over all other laws. The university has adopted MDS admission rules made by the Government and these rules are notified to all the candidates for MDS as prospectus regulations and if any inconsistency crops up between MDS Rules and University Regulations, it is the former that will prevail over the latter. (See **Dileep Damodaran v. Secretary to Government., Education Department, Hyderabad**). As required under paragraph 10 of the Presidential Order, the Government of Andhra Pradesh has mandated reservations in favour of SC, ST and BCs.

Method of Reservation

After noting the legal regime as above, a reference has to be made to the method of reservations in MDS courses. If certain percentage of reservations are earmarked as block, the candidates belonging to reserved classes were getting admission in a particular specialty of MDS, which are more often than not “last preferred specialties”. Therefore, the Government promulgated orders in G.O.Ms.No.464, dt.18.9.1993 reserving second seat in every specialty (there are two seats in every specialty) for candidates belonging to reserved classes subject to such reservation not exceeding the prescribed minimum reservation of 16% for SCs, 6% for STs and 25% for BCs. In a cycle of seven years, the reserved seats are rotated in the following roster as stipulated by Rule 4 of the Rules.

Specialties 1st seat 2nd seat proposed for option for the Reserved Candidates

For all 1st 2nd 3rd 4th 5th 6th 7th

years year year year year year year

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(1) (2) (3) (4) (5) (6) (7) (8) (9)

Orthodentic O.C. S.C. B.C. ‘A’ S.T. B.C. ‘B’ B.C. ‘C’ S.C. B.C ‘D’

Prosthetic O.C. B.C ‘A’ S.T. B.C.’B’ B.C. ‘C’ S.C. B.C.‘D’ S.C.

Dentistry

Oral and Maxillo- O.C. S.T B.C.‘B’ B.C. ‘C” S.C. B.C. ‘D’ S.C. B.C. ‘A’

Facial Surgery

Paedontic with O.C. B.C. ‘B’ B.C. ‘C’ S.C. B.C. ‘D’ S.C. B.C ‘A’ S.T.

Preventive

Dentistry

Conservative O.C. B.C. ‘B’ S.C. B.C. ‘D’ S.C. B.C. ‘A’ S.T. B.C ‘B’

Dentistry

Perio- O.C. S.C. B.C ‘D’ S.C. B.C. ‘A’ S.T. B.C.‘B’ B.C ‘C’

dontiology

Oral Medicine

And Radiology O.C. B.C. ‘D’ S.C. B.C. ‘A’ S.T. B.C. ‘B’ B.C. ‘C’ S.C.

It may be observed that the Rule does not specifically mandate that in any particular specialty the OC seat (first seat) and reserved seat for any candidate belonging to reserved classes should be earmarked as for a local candidate or non-local candidate. But, it may be presumed that the rule-making authority is aware of the Presidential Order by reason of paragraph-9 of the provisions of the Presidential Order which has overriding effect notwithstanding provisions contained in any Statute, Ordinance, Rule, Regulation or other order. In Andhra Pradesh reservations are provided by Executive Orders and of late by incorporating a rule of reservation in the relevant statutory rules. Either way, these Rules dealing with reservations have to be enforced subject to provisions of Presidential Order. Further, in the event of any inconsistency or conflict, the provisions of the Presidential Order would prevail. Thus, in every situation, the competent authority must strictly adhere to paragraph-6 of the Presidential Order while making admissions to a course in State-wide institution, that is to say reservations for local candidates in the ratio of 42:36:22 for AU, OU and SVU local areas respectively shall have to be adhered to. The principles are well settled and there cannot be any dispute nor any of the counsel dispute these principles.

While enforcing rule of reservation in favour of SCs/STs/BCs four other well-settled principles by reason of statutory rules as well as law laid down by the Supreme Court cannot be ignored and cannot be flouted. First, the rule of reservation under Article 15(4) or 16(4) and/or 15(1)(2) or 16(1) cannot be worked out to the disadvantage of the persons belonging to SCs/STs/BCs. Secondly, under relevant

statutory/non-statutory orders what is enforced is rule of minimum reservation and not maximum reservation and therefore meritorious reserved candidates getting positions on their own merit cannot be counted or reckoned for the purpose of calculating minimum reservation. Thirdly, if option is permissible in choosing position (seat in a particular educational institution or job in public employment) by reason of reservation and/or merit reserved candidate cannot be compelled to accept the position among O.C. candidates to his/her advantage. In those situations, the reserved candidate must be allowed to slide down to better reserved position with reference to a course specialty or institutional choice where the course is offered. Fourthly, "sliding rule" must be applied in the State of Andhra Pradesh subject to strict compliance with the provisions of the Presidential Order.

A Full Bench of this Court, to which I was a Member, in **Koganti Jayakrishna v. State of A.P.,** after considering the decisions in **V.Raghuramulu v. State of A.P., P. Sudershan v. State of A.P., Aswin Prafulla Pimpalwar v. State of Maharashtra, Ajay Kumar Singh v. State of Bihar,** and **R.K.Sabharwal v. State of Punjab,** culled out the following principles to be adopted as to how meritorious reserved candidate should be dealt with in the matter of public employment and admission to educational institutions.

1. The reservations under Article 15(1) read with 15(4) or Article 16(1) read with 16(4) enable minimum number of SC, ST and BC candidates to get admission in educational institutions or public employment.

2. All the citizens including SC, ST, and BC candidates have the protection of the Constitution against discrimination in matters of education, especially Articles 14, 15 and 29 of the Constitution of India.

3. If a reserved meritorious candidate is not permitted to compete with general candidates it would amount to denying fundamental right under Articles 15 and 29(2) of the Constitution on ground only of religion, race, caste, language etc.

4. In educational institutions meritorious reserved candidates on being admitted to positions in such institutions, the seats/positions given to them cannot be reckoned for the purpose of counting the minimum percentage of reservation of seats earmarked for reserved candidates.

5. In public employment SC, ST and BC candidates if they got selected in open competition field on the basis of their merit, they cannot be counted against the quota reserved for SC, ST and BCs and they will be treated as open competition candidates and excluded from the number of posts reserved for them.

6. Though reserved candidates can compete for open competition posts or seats such of them cannot be counted for the purpose of percentage reserved for them and under all circumstances, the general category candidates are entitled for consideration to the reserved posts or seats.

7. In a given selection to posts or admission programme the minimum percentage of reservation for reserved classes under no circumstances can be reduced on the ground that adequate number of reserved candidates have already got positions in the open competition.

8. The general category candidates cannot compete for the reserved posts or seats though candidates belonging to reserved categories can compete for general seats.

Insofar as sliding rule in educational institution is concerned, a reference may be made to **Ritesh Shah v. Y.L.Yamul**. In the said case the Supreme Court laid down as under.

> In view of the legal position enunciated by this Court in the aforesaid cases the conclusion is irresistible that a student who is entitled to be admitted on the basis of merit though belonging to a reserved category cannot be considered to be admitted against seats reserved for reserved category. But, at the same time the provisions should be so made that it will not work out to the disadvantage of such candidate and he may not be placed at a more disadvantageous position than the other less meritorious reserved category candidates. The aforesaid objective can be achieved if after finding out the candidates from amongst the reserved category who would otherwise come in the open merit list and then asking their option for admission into the different colleges which have been kept reserved for reserved category and thereafter the cases of less meritorious reserved category candidates should be considered and they will be allotted seats in whichever colleges the seats should be available. In other words, while a reserved category candidate entitled to admission on the basis of his merit will have the option of taking admission to the colleges where a specified number of seats have been kept reserved for reserved category but while computing the percentage of reservation he will be deemed to have been admitted as a open category candidate and not as a reserved category candidate.

After noticing **Ritesh Shah v. Y.L.Yamul** (supra), Full Bench of this Court in **Koganti Jayakrishna v. State of A.P.** (supra) explained the sliding rule.

A. A student belonging to a reserved class who is entitled to be admitted on the basis of merit cannot be considered or admitted against seats reserved for that category.

B. All the same, a provision may be made whereunder among the reserved candidates, more meritorious will get advantage of opting for better college and better course and less meritorious reserved candidate will have to reason of enforcing principle (A); select among seats which are vacant;

C. The Principles (A) and (B) can effectively be implemented at selection and admission stages, - (i) find out ore more meritorious reserved category candidates who would come up in open merit; (ii) ask their option for admission into college of their choice whose seats are kept reserved for reserved

category; and (iii) consider the option of less meritorious category for the seats in whichever colleges they are available; and

D. After completing the above stages, then one has to compute the percentage of reservation by not including the meritorious reserved category candidates percentage of reservation.

In view of the law discussed in the above paragraphs, it must be held that the university, which is competent authority cannot ignore sliding rule or other rule of reservation while filling up the seats nor the selection committee of the university take recourse to Presidential Order which requires strict compliance with the local area reservation if the sliding rule laid down by the Supreme Court and the local area reservation can be enforced. In so doing, it may be possible that the selection committee might be ignoring more meritorious candidate belonging to local area or non-local area in preference to a local area candidate belonging to reserved classes. This aspect of the matter in different context has been considered by this Court in **Dr. I.Devanand v. N.T.R. University of Health Sciences.**

Points for consideration

The first point that arises for consideration is whether it is incumbent on the part of the competent authority to fill up two unreserved seats by non-local candidates in the first instance and proceed further to fill up the remaining twelve seats as per the rules and regulations? The second question for consideration is having regard to the policy guidelines issued by MCI and various decisions of the Supreme Court the petitioners are not entitled for a direction from this Court to the competent authority to consider their cases for admission to MDS course in any of the specialty?

What is the method of selection to be adopted?

This point requires examination of questions, namely, (i) whether the university has to fill up unreserved seats first and then take up admissions for 85% of the seats in the ratio of 42 : 36: 22 for AU, OU and SVU local areas? (ii) Whether the unreserved seats should be filled up always by the candidates who obtained rank Nos.1 and 2? and
(iii) Whether sliding rule is enunciated by Supreme Court has to be followed by the University ?

In every State-wide institution 85% of the seats have to be reserved in favour of local candidates in the ratio mentioned therein. This, however, is subject to condition that there should be atleast more than three seats in a course in State-wide institution and also subject to condition that atleast one seat should be unreserved seat to be filled up by highest ranking candidate belonging to any of the three local areas. Paragraph 6 of the Presidential Order is relevant and reads as under.

6. Reservation in State-wide Universities and State-wide Educational Institutions:- (1) Admissions to eighty-five per cent of the

available seats in every course of study provided by a State-wide University or a State-wide educational institution shall be reserved in favour of local candidates and allocated among the local candidates in relation to the local areas specified in sub-paragraph (1), sub-paragraph (2) and sub-paragraph (3) of paragraph 3, in the ratio of 42 : 36 : 22 respectively. (Vide G.O.Ms.No.816, G.A. (SPF-B), Dt.26.11.1976 and G.S.R.898-(E), Dt.25.11.1976, Govt. of India).

Provided that this Sub-paragraph shall not apply in relation to any course of study in which the total number of available seats does not exceed three.

(2) While determining under sub-paragraph (1) the number of seats to be reserved in favour of the local candidates, any fraction of seat shall be counted as one:

Provided that there shall be atleast one unreserved seat.

(3) While allocating under sub-paragraph (1) the reserved seats among the local candidates in relation to different local areas, fraction of a seat shall be adjusted by counting the greatest fraction as one and, if necessary, also the greater of the remaining fractions as another; and, where the fraction to be so counted cannot be selected by reason of the fractions being equal, the selection shall be by lot:

Provided that there shall be atleast one seat allocated for the local candidates in respect of each local area.

In exercise of powers under paragraph 8, Government of Andhra Pradesh has issued G.O.P.No.646, dt.10.7.1999 laying down procedure for admissions in State-wide institutions and non-statewide institutions. This Court has considered this in **Dr. I.Devanand v. N.T.R.University of Health Sciences** (supra).

In **Dr. I.Devanand v. N.T.R.University of Health Sciences** (supra), the petitioner belonging to OU local area and SC-C candidate with rank 58, but he was not admitted to a seat in MDS earmarked for or opted by a candidate with lesser rank or admitted in a seat earmarked for AU local area as a local reserved candidate (SC-C). This was challenged as violating Presidential Order, Rationalization of SC, ST Act, Statutory Rules and executive orders. This Court noticed these regulations and also the orders of the Government in G.O.P.No.646, dt.10.7.1999 read with Annexure-IV and laid down the procedure to be followed in filling up seats in non-state-wide institution as under.

i. The number of available seats in a course has to be computed by deducting the seats reserved for candidates from outside the State. Thereafter, if the number of seats exceeds more than three, eighty five per cent of the seats have to be calculated and are to be distributed in three local areas in the ratio of 42 : 36 : 22 keeping in view paragraph 4 of the Annexure-IV.

ii. In the second stage, a provisional list of admissions has to be

prepared on the basis of relative merit local areawise, duly giving effect to relevant Rules of Reservation for SC/ST/BC/Women etc. A reading of paragraph 4 and 5 would show that a merit list of all the applicants referred to in paragraph 5 only means the merit list of all local candidates in relation to local area.

iii. a) In the third stage, the provisional list of each local area will be verified. If the number of local candidates including reserved candidates is equal or more than the number of seats reserved for local area as per paragraph 6 of the Presidential Order, the same shall be deemed to be final admission list.

b) In the eventuality of the provisional list containing less number of local candidates including the reserved candidates, the process of elimination is to be resorted in the reverse order. That is to say, the last candidate in the provisional list will be eliminated and replaced by a local candidate according to merit from the list prepared of all the merit candidates, which is referred to as remainder list.

iv. As per the illustration 'C' of Annexure-IV, if the candidate proposed to be eliminated is a Scheduled Caste candidate and if such elimination fouls the Rule of Reservation in favour of SC/ST/BC etc., such Scheduled Caste candidate can only be replaced by the first available Scheduled Caste candidate in the remainder list, who is eligible for such replacement. A reading of illustration 'C' together with paragraphs 5, 6 and 7 would show that in relation to a local area, the local Scheduled Caste candidate or for that matter a local candidate claiming reservation alone has to be given seat removing the last ranking Scheduled Caste candidate from the provisional list presumably for the reason that such a candidate is a non-local candidate. This is supported by the illustration 'C' of Annexure-III which makes clear that the Scheduled Caste candidate replacing the last ranking candidate should be necessarily a local candidate from the remainder list.

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The above procedure equally applies in the method of selection for admission to MDS for the academic year 2003-2004. A copy of the proceedings of the selection held on 28.4.2004 is placed before this Court. A reference to these proceedings in some detail is necessary. To start with the selection committee prepared charts showing local area-wise and category-wise allocation of twelve seats. Thirty-nine candidates who attended the counselling were called according to rank from merit list and were asked to give their options in the order of their preference in writing on the option form supplied to them. In the second stage, the selection committee after considering the option forms given by the candidates, selected the candidates in the following manner.

i. The candidate (OC) with first rank belonging to OU local area was selected for first seat in Orthodontia. There is no dispute or controversy about this.

ii. The candidate with rank 2 belongs to OC and OU local area. He was

admitted to the first seat in Conservative Dentistry as per his option.

iii. The candidate with rank 3 is a non-local candidate, that is to say non-local with reference to local area to which he does not belong or a candidate from outside Andhra Pradesh. He belongs to B.C-B. As per the settled principle of applying the reservation B.C-B candidate with rank 3 ought to have been treated as a merit candidate and would have been given notional admission to the first seat in one of the specialties as per the option. Then if the seat offered is not as per first option of B.C-B candidate with rank 3, the selection committee ought to have slided the said candidate to the second seat

which is earmarked for the academic year in favour of B.C-B. In such an event, the seat which is alternative option of high-ranking B.C-B non-local candidate would have been offered to the next high ranking B.C. candidate because of sliding rule. For example, if non-local B.C-B candidate with rank 3 had given his/her option for second seat in Prosthetic Dentistry, the first seat, to which he/she would have entitled as merit candidate cannot be filled up with O.C candidate, but only should go to another high ranking B.C. candidate as per local area reservation, because the seat was vacated by another B.C. candidate who opted for a better specialty. This was not done by the selection committee.

iv. The O.C. candidate with rank 4 is non-local candidate and according to his option he was admitted to first seat in Paedontics.

v. The next higher ranking O.C. candidate with rank 7 belongs to OU local area and he was admitted as per his option in the first seat in Oral and Maxillo Facial Surgery.

vi. The next OU local area candidate belongs to O.C. is rank 8 who opted for Periodontiology and was admitted as per the option exercised.

vii. The higher ranking O.C. candidate from AU local area with rank 12 opted for and was admitted in the first seat in Prosthetic Dentistry as per the option.

viii. The next higher ranking “AU local area O.C. candidate” with rank 16 was selected for admission to first seat in Oral Medicine & Radiology. As noticed hereinabove, second seat in Orthodontia was allotted to non-local B.C-B candidate with rank 3 for the academic year 2003-2004.

ix. The second seat in Prosthetic Dentistry was earmarked for B.C-C candidate and as no candidate was available, it was kept vacant during provisional selections.

x. As per G.O.Ms.No.47, dt.31.5.2000 the seats reserved for S.Cs are filled up

as per the roaster in a cycle of seven years. For the academic year 2003-2004, second seat in Oral & Maxillo Facial Surgery was earmarked for S.C-C candidate. Accordingly, higher ranking S.C-C candidate, who got rank 102 and who belongs to AU local area was selected.

xi. Second seat in Paedontics with Preventive Dentistry was allotted to higher ranking B.C-D candidate from AU local area, who got rank 76.

xii. Second seat in Conservative Dentistry is earmarked for S.C-D candidates as directed by this Court in W.A.M.P.No.1549 of 2004, dt.28.4.2004, this seat was not filled up.

xiii. Second seat in Periodontiology is earmarked for this academic year to B.C-A candidate and higher ranking B.C-A candidate who got rank 47 from SVU local area was admitted to the seat.

xiv. Second seat in Oral Medicine & Radiology for the academic year 2003-2004 is reserved for S.T. candidate. But, in the first stage of selections, it was kept vacant.

In the second stage, the selection committee proceeded in the following manner.

a. There was only one S.T. candidate with rank 85 from OU local area, who attended the counselling. The selection committee, therefore, allotted the second seat to the said S.T. candidate duly replacing the candidate with rank 8, (Dr.Rajni Kumar, first petitioner in W.P.No.8733 of 2004). This was done because first seat in Orthodontia, Oral & Maxillo Facial Surgery and Conservative Dentistry were already allotted to OU local area candidates and if 8^{th} ranking candidate is again admitted, it would exceed the quota of four seats earmarked for OU local area as per paragraph-6 of the Presidential Order.

b. As per the proceedings of the selection committee there was no B.C-C candidate available and therefore it was converted to any B.C. category and higher ranking B.C-A candidate who belongs to SVU local area was admitted by the selection committee after considering all the higher ranking B.C-A, B.C-B and B.C-C candidates. The selection committee found that if B.C. candidate with rank 8 is to be selected, the candidate from OU local area with rank 7 has to be replaced which is not permissible as per merit. Therefore, ignoring B.C-D candidate with rank 8 from OU local area, and B.C-B candidate with rank 23 from OU local area (petitioners herein), B.C-A candidate with rank 47 from SVU local area was selected so as to fill up the three seats earmarked for SVU local area as there was one seat

vacant for that local area.

c. In the remaining two seats better ranking SVU local area candidates with rank 20 was admitted to the first seat in Oral Medicine & Radiology and one seat earmarked for AU local area has been kept vacant to be filled up with S.C-D as per the Court orders.

d. Between rankers 16 and 20, the former was re-allotted Periodontiology and latter was allotted Oral Medicine & Radiology as per their options. After the selections are made, the position that emerged is already referred to earlier.

As can be seen from the above, out of four seats earmarked for OU local area, the selected candidates with rank 1 (Orthodontia), rank 2 (Conservative Dentistry), rank 7 (Oral & Maxillo Facial Surgery) are all OC/ OU local area candidates whereas the other candidate with rank 85 (Oral Medicine & Radiology) belonging to ST/OU area candidate is selected, and thus no B.C. candidate from OU local area was selected. Though the procedure adopted by the selection committee in replacing the candidate with rank 8, first petitioner, cannot be faulted. Insofar as not following the sliding rule, the selection committee must be held to have committed irregularity. As laid down by this Court in **Dr.I.Devanand v. N.T.R. University of Health Sciences** (supra) merit list of local candidates and reserved candidates has to be prepared as the candidates have to be considered as per their merit option. If in the said process, if non-local category reserved candidate opts for second seat reserved for any of the reserved categories, the same cannot be invalidated for reasons more than one.

First, the Presidential Order or Rule-4 of the MDS Admission Rules which stipulates reservation as per rotation do not specifically provided that non-local candidate belonging to reserved candidates can be considered for the second seat in every specialty. Secondly, in the whole process, only non-variable factor is the seat earmarked for a particular reserved category as per rotation as per Rule 4 and non-variable factors like option exercised by candidate and the local area to which such candidate belongs are deciding factors. Whether a particular seat is earmarked for local area or non-local area or whether a particular unreserved candidate belongs to O.C category or reserved category are not pre-determined. As and when a candidate is called, depending on his status and as to local area rank obtained by him and the option exercised by him the matter would be decided as to whether the un-reserved two seats fall in the OC category seats (first seats) or, the reserved category seats (second seats) in each specialty. Therefore, I do not find any infirmity or illegality in treating a non-local candidate in reckoning unreserved seat among reserved seats.

Nonetheless, as already observed, the high ranking reserved category candidate competing along with meritorious candidates cannot be treated as a reserved candidate competing for the second seat. If such a reserved candidate by

reason of preference to a seat opts for a particular seat, he or she shall have to be selected for that seat and the seat vacated by that candidate among first seats has to be treated as reserved seats. In the absence of entire material before this Court, it would be a wild guess as to who among the B.C candidates belonging to OU local area would have got the second seat in Orthodontia, or first seat opted and vacated by sliding by the person i.e., B.C-B non-local candidate with rank 3. This Court does not want to venture into this. By way of illustration, assuming that second rank-holder in a given year is a candidate belonging to reserved classes and that he/she gives option for Orthodontia or Prosthetic Dentistry what is to be done? In such a case, first, Orthodontia is a better preference and second ranking reserved candidate has to be notionally admitted to Prosthetic Dentistry and he should be slided to second seat in Orthodontia. In such an event, first seat in Prosthetic Dentistry which is second option of second ranking candidate has to be made available for admission among reserved categories duly calling next highest ranking SC/ST/BC candidate for admission to such seat. In a given case, the number of SC/ST/BC candidates getting admission may be more than seven seats which would be in accordance with the Rules.

The selection committee has not applied the sliding rule while admitting B.C-B non-local candidate with rank 3, by reason of which petitioners are deprived of their right of being considered for admission to MDS course. This point is answered accordingly.

Whether petitioners are not entitled to any relief?

The second aspect of the matter is the relief to be given to the petitioners. Ordinarily, the aggrieved person in whose favour this Court gives declaration, should necessarily get all consequential benefits. In this case, the petitioners seek a direction to the respondents to consider the case of the petitioners for admission into MDS course in any of the specialties for the academic year 2003-2004. Learned Standing Counsel for the university vehemently contends that the MDS course for the academic year 2003-2004 commenced in May 2004 and therefore, no direction can be given at this stage in favour of the petitioners. She placed strong reliance on the decisions of the Supreme Court in **Medical Council of India v. Madhu Singh** (supra)**, Shafali Nandwani v. State of Haryana** (supra)**, Paramjeet Gambhir v. State of M.P.** (supra)**, and Neelu Arora v. Union of India** (supra) in support of the submission. To appreciate the contention, a reference to chronology of events and the role of Medical Council of India (MCI) established under the Medical Council of India Act, 1956 (hereafter called, MCI Act) in regulating the system of medical education may briefly be noticed.

MCI Act was made with an object to deal with matters connected with medical profession and medical education. Though the medical colleges are in private sector or public sector, for the purpose of regulation they are under the administrative control of the respective State Governments, the standards of medical education, structure of medical course, admission procedure to Post-Graduate and non-Post-

Graduate courses have been entrusted to all India body, i.e., MCI constituted under Section 3 of the MCI Act. Section 33 confers power on MCI to make regulations in relation to and with regard to standards of medical education. At one point of time, the Courts in India held that the regulations or policy guidelines of MCI are only recommendatory in nature and are not binding. In **Dr. Preeti Srivastava v. State of Madhya Pradesh** a Constitution Bench of the Supreme Court considered earlier decisions in **State of M.P. v. Nivedita Jain, Dr. Ambesh Kumar v. Principal, LLRM Medical College,** and **Ajay Kumar Singh v. State of Bihar** and while overruling these judgments held that all the authorities in the country are bound to comply with the standards prescribed by MCI and that the earlier view that the regulations made by MCI do not cover the admission procedure was held to be incorrect, though it is competent for the State to lay down clarifications in addition to those prescribed by MCI, so long as the same do not lower the standards prescribed by MCI. The relevant observations made in the majority judgments are as under.

> It would be incorrect to say that the norms for admission have no connection with the standard of education, or that the rules for admission are covered only by Entry 25 of List III. Norms of admission can have a direct impact on the standards of education. Of course, there can be rules for admission which are consistent with or do not affect adversely the standards of education prescribed by the Union in exercise of powers under Entry 66 of List I. For example, a State may, for admission to the Post-Graduate Medical courses, lay down qualifications in addition to those prescribed under Entry 66 of List I. This would be consistent with promoting higher standards for admission to the higher educational courses. But any lowering of the norms laid down can, and do have an adverse effect on the standards of education in the institutes of higher education…

As per Statutory Rules, competent authority to make admissions to MDS course is the University of Health Sciences. The University issued a notification on 9.6.2003 inviting applications for entrance test from those candidates seeking admission to first year MBBS course which is 2 ½ years duration. In pursuance thereof, entrance test was held on 27.7.2003 and the results of the same were declared on 11.8.2003. Though the counselling was to be held by selection committee on 20.8.2003, the same could not be held and the counseling was held on 28.4.2004 for selecting candidates for admission to the course for the academic year 2003-2004. Dr.Sushma Kumari apprehending that the university might not fill up the seat earmarked for B.C-B category with non-local candidates filed W.P.No.20769 of 2003 on 24.9.2003. She also filed W.P.M.P.Nos.25988 and 25989 of 2003 praying this Court to grant admission to her and also for a direction to respondents to refrain from filling up any seats in M.D.S. Orthodontia, the course earmarked for BC, SC, ST with non-local un-reserved category students. This Court by order dt.10.2.2004 dismissed the W.P.M.Ps.

A copy of communication dt.1.11.2003 sent by MCI to university placed before this Court. This was issued pursuant to the judgment of the Supreme Court in **Medical Council of India v. Madhu Singh** (supra). While referring to policy guidelines of Government of India dt.14.5.2003, MCI informed the time schedule for admission for

the academic year 2003-2004 for admission to M.B.B.S./B.D.S. courses as well as Post-Graduate courses in the State. This communication also contains schedule of admissions in Post-Graduate Medicine courses as well as super-specialty courses. The schedule of programme as contained in policy guidelines of Government of India dt.14.5.2003 was reproduced in the communication of MCI which reads as under.

Schedule forAdmission	1st MBBS/BDS Course		**Postgraduate Courses**		Super-SpecialtyCourses
	All IndiaQuota	StateQuota	All IndiaQuota	State Quota	
Conduct of entranceExamination	Month ofMay	Monthof May	2nd Sunday of January	Mid-JanTo Mid-Feb	May – June
Declaration of result of qualifying exam/ entrance exam.	By 5th June	By 15th June	3rd week of Feb.	By 28th February	By 30th June
1st round of counseling/admissions	20th to 29th June	To be over by 17th July	5th March to 22nd March	To be over by 25th April	To be over by 25th July
Last date for joining the allotted college and course	18th July	29th July	7th April	1st May	31st July
2nd round of counselling or allotment seats from waiting list	1st August to 8th August	26th to 28th August	No 2nd coun-selling	No 2ndcounselling	No 2nd counselling
Last date for joining for candidates allotted seats in 2nd round of counselling or from the waiting list	22nd August (seat va- cant after this date will be surrendered back to the States /Colleges)	30th August	After 7th April, vacant seats will stand surren-dered back to the States/ Colleges	Not applicable	Not applicable
Commencement of academic session Last date upto which students can be admitted against vacancies arising due to any reason	**Between 1st August to 31st August 30th September**		**2nd May 31st May**		1st August 30th September

(emphasis supplied)

Further, pursuant to the judgment of the Supreme Court in **Medical Council of India v. Madhu Singh** (supra), the following schedule of admissions including last date for admissions and commencement of Post-Graduate and Super-Specialty Medicine courses was decided by the General Body of MCI to be enforced from the academic session 2004 onwards. The schedule of admissions for Post-Graduate Medicine Courses is as under.

SCHEDULE OF ADMISSIONS IN POST-GRADUATE MEDICINE

COURSES

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1. The results of the qualifying post-graduate entrance tests conducted by all the examining authorities concerned shall be declared on or before 28th February of the concerned year.

2. The admission including counselling thereof be completed by all the admitting authorities and agencies on or before 1st May of the concerned year.

3. The academic session for the admitted students to commence in all the teaching institutions on 2nd May of the concerned year.

4. The resultant/consequential admissions for any or all the arising reason shall be completed by 31st May of the concerned year.

5. No admissions shall be made by the admitting agency beyond 31st May of the concerned year.

However, liberty was given to any medical college/institution/ authority to approach MCI to entertain any request to extend the last date of admissions prescribed as 31.5.2004 for Post-Graduate Medical Courses and 30.9.2004 for Super-specialty Courses.

It is not denied before me that though initially the counselling for selecting students for admission to first year M.D.S. course was scheduled on 20.8.2003, by reason of Court orders, the university could not proceed with the same. After this Court passed orders in W.A.No.824 of 2004, dt.23.4.2004 directing the university to proceed with the counselling, the duly constituted selection committee conducted counselling on 28.4.2004 and completed admission except with regard to one seat reserved for SC-D candidate as per the orders of this Court. It is also brought to the notice of this Court that after completion of counselling, the course commenced in right earnest and as on the date of completion of oral arguments first year MDS course is already in its fifth month. In this undisputed situation, is it permissible for this Court to issue a Mandamus directing the university to consider the petitioners for admission to First Year MDS course during 2003-2004 academic year ?

I n **Ajay Pradhan v. State of M.P.**, the main question that had fallen for determination was whether in terms of Rule 10 of Madhya Pradesh Selection for Post-Graduate Courses (Clinical, Para-clinical and Non-clinical Courses) in Medical Colleges of Madhya Pradesh Rules, 1984 (‘the Rules’ for brevity) there is a right to admission to a seat in the P.G. course in MD/MS falling vacant in a medical college ‘in the midst of or ‘towards the end of an academic year to which it pertains. The appellant, Dr.Ajay Pradhan, who was not given admission in M.D. (General Medicine), but was given admission in the Diploma Course in Radiology, filed a writ petition before the High Court of Madhya Pradesh at Gwalior. He staked a claim to fill up the vacant seat in M.D. (Genl.Med.), which had fallen vacant due to the death of Dr.Arun Yadav in a road accident, on the ground that the candidates placed

above him in the merit list had been rendered ineligible having either opted for the Diploma course in Radiology or had left their house job. As his claim was turned down by the respondents, he moved the High Court. A Division Bench of the High Court dismissed the writ petition holding that the claim of the appellant in terms of Rule 10 of the Rules was misconceived. Rule 10 of the Rules read as under.

> The seats available in any particular year will be filled up in that year. No candidate will be admitted against the seats remaining vacant from previous year.

While interpreting Rule 10 of the Rules, a Division Bench of the Supreme Court observed as follows.

> On a plain construction R.10 is two parts. The power to admit a student under the first part arises when a seat falls vacant in a particular year. The worlds 'filled up in that year' necessarily qualify the preceding words 'the seats available in any particular year'. It must logically follow that a necessary concomitant of the power under the first part of R.10 is the 'availability' of the seat being filled up in the academic year to which it pertains. The words 'filled up in that year' which follow clearly imply that the vacancy cannot be carried over to the next academic year or years. That construction of ours is reinforced by the second part of R.10 which, by the use of negative language, clearly creates a bar against the seat being filled up in the next or succeeding academic year. What is implicit in the first part of R.10 is made explicit in the second part. The use of the negative words in the second part 'No candidates will be admitted…etc.' are clearly prohibitory in nature and exclude the applicability of the carry-forward rule. It follows that if a seat falls vacant for any reason, namely, that the candidate selected in order of merit does not join the PG course in MD/MS in a medical college or by reason of his death or otherwise, and due to inaction on the part of the authorities the seat is not filled up in the academic year to which it pertains, there is no question of the vacancy being carried forward to the next academic year.
>
> Rule 10 is a specific provision made for the benefit of the merit candidates who are placed in the waiting list. Normally, the question of a seat being filled up must arise at the commencement of the academic year or soon thereafter. In our considered opinion, on the terms of R.10 as it exists, no other view is possible. When a seat falls vacant in any particular academic year there is a corresponding duty cast on the authorities to take immediate steps to fill up the same. Thee is no question of a right of admission to a seat falling vacant in the midst of, or towards the end of the academic year.
>
> …The syllabus prescribed by the Medical Council of India for the PG course in MD/MS as also the student-teacher ratio of 1:1 virtually negate the right to admission to a seat falling vacant in the midst of or towards the end of the academic year to which it pertains.

Ultimately, the Supreme Court dismissed the appeal.

I n **State of U.P. v. Anupam Gupta** the legality of the orders passed by the Allahabad High Court directing to give admission in the Post-Graduate courses to

the Doctors who appeared for the Post-Graduate Medical Entrance Examination and secured minimum 50% qualifying marks, was challenged before the Supreme Court. The High Court, while upholding the validity of the prescription of 50% of the minimum marks for admission to P.G.courses, directed the two vacant seats to be given to the Doctors who qualified in the entrance examination. The main contention before the Supreme Court was that the High Court's order after more than a year from the commencement of the courses is illegal, though seats are vacant. While allowing the appeals filed by the State, the Supreme Court held as follows.

> …to maintain excellence the courses have to be commenced on schedule and to be completed within the schedule, so that the students would have full opportunity to study full course to meet their excellence and come at part excellence. Admission in the midstream would disturb the courses and also works an handicap to the candidates themselves to achieve excellence. Considering from this pragmatic point of view we are of the considered opinion that vacancies of the seats would not be taken as a ground to give admission and direction by the High Court to admit the candidates into those vacant seats cannot be sustained.

In **Medical Council of India v. Madhu Singh** (supra) after referring to Medical Council of India Regulations on Graduate Medical Education, 1997 the Supreme Court laid down as under.

> There is, however, a necessity for specifically providing the time schedule for the course and fixing the period during which admissions can take place, making it clear that no admission can be granted after the schedule date, which essentially should be the date for commencement of the course.
>
> In conclusion:
>
> i. there is scope for admitting students mid-stream as that would be against very spirit of statutes governing the medical education;
>
> ii. even if, seats are untilled that cannot be a ground for making mid-session admissions;
>
> iii. there cannot be telescoping of unfilled seats of one year with permitted seats of the subsequent year;
>
> iv. the MCI shall ensure that the examining bodies fix a time schedule specifying the duration of this course, the date of commencement of the course and the last date for admission;
>
> v. different modalities for admission can be worked out and necessary steps like holding of examination if prescribed, counselling and the like have to be completed within the specified time;
>
> vi. no variation of the schedule so far as admissions are concerned shall be allowed;
>
> vii. in case of any deviation by the concerned institution, action as prescribed shall be taken by the MCI.

In **Shafali Nandwani v. State of Haryana** (supra) the Supreme Court after referring to **Indu Kant (Dr.) v. State of U.P., Medical Council of India v. State of Karnataka,** and **Medical Council of India v. Madhu Singh** (supra), laid down as under.

> …To permit Respondent 4 to take admission MD (Medicine) for the subsequent academic session would not only be a contravention of the prospectus but would also amount to an increase in the permissible seats for postgraduate students in MD (Medicine) for the subsequent year. This is impermissible under Regulation 10(A) of the Medical Council of India Regulations on Graduate Medical Education, 1997 which provides, inter alia, that no medical college shall increase its admission capacity in any course of study or training (including a postgraduate course of study or training) except with the previous permission of the Central Government. An academic seat is limited to an academic session. …Besides there is no question of Respondent 4 "making up" the requisite period necessary to complete the course. The course is for three years which having commenced in May 2000 should be completed in May 2003. Respondent 4 would be wholly ill equipped to take the examination nor would he have put in the requisite number of years for taking the 2003 examination. There is no provision by which a student who has, for whatever reason, failed to attend the course from the commencement of the session to take supplementary classes in order to be sufficiently equipped for the final examination. Apart from anything else, the postgraduate courses in question are for 3 years. Respondent 4 and the appellant have already completed two-and-a-half years of their respective courses. To disallow the appellant from completing her MD (Medicine) and to grant admission to Respondent 4 in MD (Medicine) at this stage would amount to a colossal waste of effort and expenditure.

In Neelu Arora v. Union of India (supra) the Supreme Court referred to earlier decisions including the decision in **Medical Council of India v. Madhu Singh** (supra) and observed as under.

> …It would not be advisable to go on altering the scheme as and when seats are found vacant. What is to be borne in mind is that broad equality will have to be achieved and not that it should result in any mathematical exactitude. Out or about 1600 seats, if 250 seats are not filled up for various reasons, we do not think it should result in the third round of counselling. If that process if to be adopted then there will be again vacancies and further filling up of the seats falling vacant will have to be undertaken. In that process, it will become endless until al the seats under the all-India quota are filled up. That is not the object of the Scheme formulated by this Court. The object was to achieve a broad-based equality as indicated by us at the outset and we do not think that any steps have to be taken for altering the Scheme. Moreover, this Court in Medical Council of India v. Madhu Singh has taken the view that there is no scope fro admitting students midstream as that would be against the very spirit of statutes governing medical education. Even if seats are unfilled, that cannot be a ground for making mid-session admissions and there cannot be telescoping of unfilled seats of one year with permitted seats of the subsequent year.

In **Paramjeet Gambhir v. State of M.P.** (supra) while reiterating the law laid down in **Medical Council of India v. Madhu Singh** (supra) the Supreme Court observed as under.

> It is true that in a series of decisions of this Court starting from Dinesh Kumar (Dr) v. Motilal Nehru Medical College, State of Bihar v. Sanjay Kumar Sinha, State of U.P. v. Dr.Anupam Gupta (supra), and finally Medical Council of India v. Madhu Singh (supra) it has been held that the timetable for the course should be strictly adhered to and there is no scope for admitting students midstream which would be against the very spirit of the statute governing medical education.

Learned counsel for the petitioners strenuously contends that when the selections are vitiated by fundamental flaw with reference to method of selection adopted by the selection committee and when the university itself did not adhere to the policy guidelines issued by MCI, nothing prevents this Court from issuing Mandamus as prayed for. I am afraid, this submission is misconceived and is noted only for the purpose of rejection. The university no doubt notified the counseling on 20.8.2003 beyond the last date prescribed by the Government of India/MCI in their policy guidelines. That was not due to the fault on the part of the university. Various reasons like Court orders, Government Orders, etc., curtailed the liberty of the university and in spite of the same, the university completed admissions for 2003-2004. Merely because this situation has arisen for no fault of the university, a student cannot seek a Mandamus before this Court which would be contrary to the regulations and policy guidelines issued by MCI under Section 33 of the MCI Act and binding precedents of the Hon'ble Supreme Court. As rightly and fairly contended by the learned Standing Counsel for the university with regard to filling up the seats reserved for different classes or with reference to sliding rule the decision of this Court would have to be prospective and does not in any manner nullifies the selections and directions already made. Though this Court dismissed the W.P.M.Ps filed by second petitioner in the earlier Writ Petition on 10.2.2004 and admissions were completed in April, 2004, the petitioners have not chosen to implead all the candidates got admitted to various specialties in MDS. In the absence of these proper and necessary parties, no Mandamus can be issued as prayed for. This also yet another reason for denying relief to petitioners.

The Writ Petition for the above reasons, is dismissed without any order as to costs. Be it made clear that the conclusions and the principles laid down by this Court with regard to first point for consideration shall only operate prospectively and would bind on the university in future.

_____

(V.V.S.RAO, J)

.11.2004

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Note:1. LR copy be marked.

2. A copy of this judgment shall be

sent to Government of Andhra Pradesh

in Medical and Health Department

for appropriate action.

(B.O)

bnr

To

(One fair copy to the Hon'ble Sri Justice V.V.S.RAO for his Lordships kind perusal)

1. The Principal Secretary to Government, State of Andhra Pradesh,

Education (Higher Education) Department, Secretariat, Hyderabad.

2. The Principal Secretary to Government, State of Andhra Pradesh,

Medical, Health & Family Welfare Department, Secretariat, Hyderabad.

3. The Registrar, NTR University of Health Sciences, Vijayawada.

4. The Chairman, the Selection Committee for admission into M.D.S,

Course - 2003, NTR University of Health Sciences, Vijayawada.

5. 8 LR copies.

6. The Under Secretary, Union of India, Department of Law, Justice and

Company Affairs, New Delhi.

7. The Secretary, A.P.Advocates' Association Library, High Court of A.P.,

Hyderabad.

8. 2 CCs to the G.P. for Higher Education, High Court Buildings,

Hyderabad (OUT).

9. 2 CCs to the G.P. for Medical, Health and Family Welfare Department,

High Court Buildings, Hyderabad (OUT).

10. 2 CD copies.